

## GARNISHMENT QUESTIONS

### **What is a Garnishment?** (MAG 35-FAQ)

A garnishment is a proceeding against a third party ("the garnishee"). The garnishee has money or other property belonging to the judgment debtor-defendant. Garnishment is the term of the legal process by which the garnishee pays into court the money, or property, that the garnishee owes to the judgment debtor.

1. **Continuing Garnishments** are filed against a person's place of employment and last for approximately seven months, or until the garnishment is satisfied, whichever comes first. **25%** of the defendant's 'take-home' pay will be attached each month. If the debt is not paid within the seven months, a new garnishment will have to be filed to collect the remaining balance.
2. **Regular Garnishments** are typically filed against a bank, credit union, brokerage firm, employer, business which owes judgment creditor money. This filing will capture the amount you file for or whatever might be in the account or owed at that time. In the case of commissions, it will capture **100%** of commissions for one month, or whatever you file for. If the judgment creditor is a self-employed, a regular garnishment will seize all sums up the amount of the garnishment that the garnishee owes the self employed judgment creditor at that time.
3. **Support Garnishments** are used to capture the periodic support for a family member - Alimony in the case of the awarded spouse, and Child Support in the case of children. The defendant must be behind at least one month's court ordered support before a Garnishment can be filed. **50%** of the defendant's 'take-home' pay will be attached. A Support Garnishment has no termination date; it lasts until a zero balance is reached, indicating that the defendant has become current on payments.
4. **Tax Revenue Garnishments** are filed by the Georgia Department of Revenue for unpaid State Income Taxes and are not available to the public.

### **Glossary of important Garnishment terms:**

**Collateral** - Property that guarantees payment of a secured debt.

**Default** - A failure to perform a legal duty.

**Garnishee** - A person or business entity, such as a corporation or bank which holds or owe monies or property to the judgment debtor.

**Garnishment** - A court-ordered process that takes property from a person to satisfy a debt.

**Judgment Debtor** - A person or entity (such as a bank) that owes money.

**Plaintiff** - In a garnishment action, the plaintiff is the judgment creditor who is seeking to collect a judgment wherein the judgment debtor owes money to the judgment creditor.

See **O.C.G.A 18-4-20**. Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution. Statute text:

- (a) As used in this Code section, the term:
  1. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of the amounts required by law to be withheld.
  2. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
- (b) All debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from the date of service to the date of the garnishee's answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment.
- (c) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or control of the garnishee at any time from the date of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.
- (d)
  1. Notwithstanding subsection (a) of this Code section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of:
    - (A) Twenty-five percent of his disposable earnings for that week; or
    - (B) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, Section 206(a)(1), in effect at the time the earnings are payable.
  2. In case of earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subparagraph (B) of paragraph (1) of this subsection shall be used.
- (e) The limitation on garnishment set forth in subsection (d) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of garnishment based on a judgment for alimony or the support of a dependent, in which case the limitation on garnishment set forth in subsection (f) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant. No garnishee shall withhold from the disposable earnings of the defendant any sum greater than the amount prescribed by subsection (d) or subsection (f) of this Code section, as applicable, regardless of the number of summonses served upon the garnishee.

- (f) The exemption provided by subsection (d) of this Code section shall not apply if the judgment upon which the garnishment is based is a judgment for alimony or for the support of any dependent of the defendant, provided the summons of garnishment shall contain a notice to the garnishee that the garnishment is based on the judgment for alimony or the support of a dependent. In any case in which the garnishment is based on the judgment, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall be 50 percent of the individual's disposable earnings for that week.

**Are there special instructions for serving the defendant judgment debtor in a garnishment action? (MAG 35-FAQ)**

Yes. The procedures for serving the defendant judgment debtor are set forth in MAG 35-08.

**Are there any special requirements to file a garnishment against a financial institution? (MAG 35-FAQ)**

Yes. See *O.C.G.A. 18-4-20* (i) A summons of garnishment upon a financial institution, or an attachment thereto, shall state with particularity all of the following information, to the extent reasonably available to the plaintiff:

1. The name of the defendant, and, to the extent such would reasonably enable the garnishee to answer properly the summons, all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof;
2. The service address and the current addresses of the defendant and, to the extent such would reasonably enable the garnishee to answer properly the summons of garnishment and such is reasonably available to the plaintiff, the past addresses of the defendant;
3. The social security number or federal tax identification number of the defendant; and
4. Account, identification, or tracking numbers known or suspected by the plaintiff to be used by the garnishee in the identification or administration of the defendant's funds or property.

A misspelling of any information required by paragraph (1) or (2) of this subsection, other than the surname of a natural person defendant, shall not invalidate a summons of garnishment, so long as such information is not misleading in a search of the garnishee's records.

**What happens when the garnishee fails to file a timely answer? (MAG 35-FAQ)**

The garnishee becomes automatically in default after failing to file an answer within 45 days. The default may be opened by the garnishee if they pay court costs within 15 days of going into default.

The plaintiff may have a default judgment entered against the garnishee for the entire amount claimed due on the judgment on which this garnishment was based. The plaintiff

MUST give legal notice of the default judgment to the garnishee. Usually, certified mail, sheriff's service, or hand delivery will be adequate. The burden of proving notice to the garnishee is upon the plaintiff.

**O.C.G.A. 18-4-91.** Relief of garnishee from default judgment and Plaintiff's duty to notify Garnishee: When a judgment is rendered against a garnishee under Code Section 18-4-90, on a motion filed not later than 60 days from the date the garnishee receives actual notice of the entry of the judgment against him, he may, upon payment of all accrued costs of court, have the judgment modified so that the amount of the judgment shall be reduced to an amount equal to the greater of \$50.00 or \$50.00 plus 100% (percent) of the amount by which the garnishee was indebted to the defendant from the time of service of the summons of garnishment through and including the last day on which a timely answer could have been made for all money, other property, or effects belonging to the defendant which came into the garnishee's hands from the time of service of the summons through and including the last day on which a timely answer could have been made and, in the case of garnishment of wages, less any exemption allowed the defendant by law. Notice to the garnishee by certified mail or statutory overnight delivery shall be sufficient notice as required in this Code section. On the trial of the motion, the burden of proof shall be upon any plaintiff who objects to the timeliness of the motion to establish that the motion was not filed within the time provided for by this Code section.

**I am the Judgment Debtor. What can I do to respond to this garnishment?** (MAG 35-FAQ)

Defendant may file a Traverse to dissolve the garnishment (MAG 35-03). A traverse is a legal document filed with the Clerk of Court by which defendant contends that the facts contained in the affidavit of garnishment, amounts, underlying judgment, or the garnishment action itself, or other matters are incorrect. Defendant's may file a traverse in person at the *Walton County Magistrate Court located at 303 South Hammond Drive, Suite 116, Monroe, Georgia 30655* (normal business hours); or by mail to the same address. Reminder, state law does not permit faxed documents to be filed with the Clerk.

If you are not familiar with the Georgia law concerning garnishment cases, consult an attorney. ([www.gcba.org](http://www.gcba.org)) The Clerk's office cannot give you legal advice. The laws concerning filing of an Answer by a Garnishee and subsequent proceedings by the Defendant can be found in the Official Code of Georgia (Annotated) **O.C.G.A. 18-4-1 et seq.**

Failure to file a Traverse of Garnishment will result in a conclusive presumption that the garnishment against the defendant was properly issued.